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January 15, 2004

BY ELECTRONIC DELIVERY

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: *Ex Parte Presentation*, Verizon, SBC and Qwest  
Petitions for Forbearance from Section 271, CC  
Docket No. 01-338, WC Docket Nos. 03-235, 03-260

Dear Ms. Dortch:

On January 14, 2004, Kimberly Scardino and Dennis Guard, MCI, and Ruth Milkman and the undersigned, Lawler, Metzger & Milkman, counsel to MCI, met separately with Christopher Libertelli, Senior Legal Advisor to Chairman Powell, Matthew Brill, Senior Legal Advisor to Commissioner Abernathy, and Lisa Zaina, Senior Legal Advisor to Commissioner Adelstein. On the same day, MCI representatives also met with Thomas Navin, Pamela Arluk, and Marcus Maher of the Competition Policy Division of the Wireline Competition Bureau. During those meetings, MCI urged the Commission to deny the Verizon, SBC and Qwest petitions for forbearance from section 271, as described in the attached presentation and MCI's previous written submissions in these dockets.

Pursuant to the Commission's rules, this letter is being provided to you for inclusion in the public record of the above-referenced proceeding.

Sincerely,

A. Renée Callahan

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Attachment

cc: Christopher Libertelli  
Matthew Brill  
Lisa Zaina  
Thomas Navin  
Pamela Arluk  
Marcus Maher

# Verizon, SBC and Qwest Petitions for Forbearance from Section 271

CC Docket No. 01-338, WC Docket Nos. 03-235, 03-260  
January 14, 2004



# Overview

- The BOC forbearance petitions are premature
  - Section 251 obligations are the subject of a pending appeal, and the BOC petitions tie the BOCs' section 271 obligations to their section 251 obligations
  - Logical progression is:
    - D.C. Circuit rules on the appeal of the Triennial Review Order
    - FCC then considers forbearance petitions
- Section 10 requires a market-specific and fact-specific showing, a showing that the BOCs have omitted from their petitions
  - FCC should make determinations with respect to forbearance only on the basis of a complete record

# The BOCs Have Failed to Satisfy the Statutory Requirements

- Sections 10(a) and (b) require a market-specific and fact-specific showing of competitive alternatives
  - The BOCs have failed to make such a showing, and in fact could not make this showing, with respect to fiber-based loops
- The BOCs have not demonstrated (nor could they at this time) that the requirements of section 271 have been fully implemented, as required by section 10(d)
  - The Commission should determine that section 271 is fully implemented only once it concludes that in a relevant geographic area, a robust wholesale market exists

# Differences Between Section 251 Analysis and Forbearance Analysis

- Section 271 creates an “independent and ongoing access obligation” (*UNE Triennial Review Order* ¶ 654)
- The fundamental premise of the BOC petitions is that the analysis supporting the end to a section 251 access obligation necessarily also supports a conclusion that the Commission must forbear from the comparable section 271 obligation
- This premise is fatally flawed:
  - It is possible that some of the facts and analysis underlying a determination that *no impairment* existed would also be useful in analyzing whether forbearance from section 271 access requirements is proper (though a fact-specific, market-specific showing of competitive alternatives would still be required)
  - However, the FCC did not find that there is no impairment with respect to hybrid loops, but instead stated that section 706 was integral to the decision not to require unbundled access to these loops for broadband service

## Requiring Unbundled Access to Loops for Broadband Services Is Consistent with the *UNE Triennial Review Order*

- Competitors cannot provide broadband service without access to the last-mile loop facilities connecting end users to the telephone network
- Access to fiber-fed loops pursuant to section 271 is necessary for access to copper subloops
  - *UNE Triennial Review Order*: “Specifically, we expect that incumbent LECs will develop wholesale service offerings for access to their fiber feeder to ensure that competitive LECs have access to copper subloops. ” (¶ 253 & n.755)

## Section 271 Access Costs are Minimal

- The BOCs attempt to bolster their requests for forbearance by raising the specter of countless network modifications and additional costs that section 271 access ostensibly will entail
- Contrary to those claims, section 271 unbundled access simply requires that the transmission be priced separately, and imposes no “redesign” requirements
- In fact, Verizon, SBC, and Qwest have proposed to provide the type of unbundled access that MCI is seeking – *i.e.*, a bitstream handoff at the central office, or some other point in the network

## Section 271 Requires Access to the Full Functionality of All Loops

- The BOCs' attempts to claim that section 271 does not cover "broadband" facilities is belied by the plain language of section 271
  - Checklist item 4 requires the BOCs to provide access to the "[l]ocal loop transmission from the central office to the customer's premises . . . ."
  - Item 4 clearly encompasses fiber and hybrid fiber-copper loops, both of which are a means of transmission from the central office to the customer's premises
- The local loop includes all the "features, functions, and capabilities" located between the central office and the customer's premises